

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HENRY WATKINS,

Plaintiff,

V.

PENNSYLVANIA BOARD OF
PROBATION & PAROLE,
EDWARD JONES, and MICHAEL BUKATA

Defendants.

NO. 02-CV-2881

DEFENDANTS' AMENDED PRETRIAL MEMORANDUM

Defendants, the Pennsylvania Board of Probation and Parole (“the Board”), Willie E. Jones (“Mr. Jones”) (improperly pled as Edward Jones), and Michael Bukata (“Mr. Bukata”), by their attorneys, Dilworth Paxson LLP, respectfully submit this Amended Pretrial Memorandum. The Defendants have amended their pretrial that they filed on August 22, 2006 (Docket No. 76) based upon the Court’s summary judgment ruling of August 16, 2006 (Docket No. 69) dismissing plaintiff’s retaliation and conspiracy claims.

I. JURISDICTION

This Court has federal question jurisdiction over Plaintiff’s 42 U.S.C. § 2000e (“Title VII”), 42 U.S.C. § 1981 (“Section 1981”), and 42 U.S.C. § 1983 (“Section 1983”) discrimination claims under 28 U.S.C. § 1331.

II. NATURE OF THE CASE

Plaintiff Henry Watkins' remaining claims are:

Count	Claim	Defendants
I	Discrimination concerning alleged contractual relationship under 42 U.S.C. § 1981 ("Section 1981") and 42 U.S.C. § 1983 ("Section 1983")	The Board Mr. Jones (<i>official/individual</i>) Mr. Bukata (<i>official/individual</i>)
V	Hostile Work Environment under 42 U.S.C. § 2000(e) ("Title VII")	The Board Mr. Jones (<i>official</i>) Mr. Bukata (<i>official</i>)

Mr. Watkins alleges that the defendants discriminated against him because of his race, African American. As evidence of discrimination, Mr. Watkins alleges that:

- From 1999-2001, when Mr. Bukata was his supervisor, he received unfair performance evaluations;
- The defendants only included negative comments on his performance evaluations;
- Mr. Bukata did not meet with him to discuss his performance evaluations;
- Mr. Bukata did not give one on one supervision to him, but did give one on one supervision to Donna Henry and Stuart Greenberg;
- There was no opportunity to correct any job deficiencies because he only learned of performance deficiencies when he received performance evaluations;
- Mr. Bukata never addressed his performance issues informally;
- Mr. Jones would not meet with Mr. Watkins, but he did meet with white employees;
- When he did meet with Mr. Jones and Mr. Bukata in November of 2000, he was not able to express his concerns;
- When he filed a grievance in December of 2000, Thomas Marshall, the Board's former Labor Relations Coordinator, would not listen to his concerns;
- He was assigned more cases than white supervisors;

- Mr. Bukata retaliated against him by denying him clerical staff, which forced him to do his own clerical work;
- Donna Henry and Stuart Greenberg, white supervisors, were not denied clerical staff;
- Although Mr. Bukata offered him the use of his (Mr. Bukata's) secretary, the offer was a "sham" because she was too busy, would not assist him and was not located near him;
- A practice and pattern of discrimination is evidenced by "numerous settlements of suits".

Defendants allege that there is no merit to the above allegations and assert that the treatment of Mr. Watkins during his employment was fair and equitable. Moreover, Mr. Watkins suffered no adverse employment action based on his race.

III. DEFENDANTS' COUNTER-STATEMENT OF FACTS

The Pennsylvania Board of Probation and Parole ("the Board") is an independent agency of the Commonwealth of Pennsylvania. It has the statutory authority to parole and reparole and commit and recommit for violations of parole, offenders sentenced to a maximum of two or more years.

Defendant, Willie Ed Jones is employed by the Board as a District Director, for the Board's Philadelphia district. He has held that position since April of 1997. Mr. Jones never directly supervised Mr. Watkins.

Defendant, Michael Bukata was employed by the Board as a Deputy District Director. Mr. Bukata retired from the Board in January of 2004. Mr. Bukata was responsible for reviewing cases to issue warrants, issuing release orders and subpoenas, and essentially, ensuring that supervisors did their jobs properly. Beginning in July 1999, Mr. Bukata became Mr. Watkins' direct supervisor. Mr. Bukata reported to Mr. Jones.

Mr. Watkins began his employment with the Board as a Parole Agent in October 1973. The Board promoted Mr. Watkins to the position of Parole Supervisor in 1998.

The Board has a detailed disciplinary procedure that outlines the process that must be followed before an employee may be disciplined for failure to comply with Board policies or procedures. Under the Board's Procedure, if a supervisor believes that an employee has violated a Work Rule, Board Policy, the Board's Code of Conduct, or a Commonwealth-wide policy, the supervisor is required to contact the Labor Relations Coordinator or the Director of the Personnel Division regarding how to proceed. The Labor Relations Coordinator or the Director of the Personnel Division then advises whether a Pre-disciplinary Conference ("PDC") should occur. If a PDC is to occur, the employee is notified in writing of the date of the PDC and the reason(s) for it. By definition, and in practice, a PDC is not a disciplinary action. The PDC is then conducted, giving the employee an opportunity to respond to the alleged work violation with a union representative present.

After a PDC is completed a report is prepared and sent to the office of the Director of Personnel for her review, and review by the Labor Relations Coordinator. After review, the Labor Relations Coordinator makes a recommendation to the Director of the Personnel Office, who then provides her own independent determination of whether there was a violation. She also provides a recommendation of the appropriate level of discipline if there was a violation. Discipline may include a written reprimand, suspension or termination.

The Director of the Personnel Division then forwards her recommendation to the Director, Bureau of Human Resources, and the Director, Office of Probation and Parole Services, who either approve or disapprove her recommendation and return it to her. Only after all these steps are accomplished does the Director of the Personnel Division instruct the Labor

Relations Coordinator to compose a discipline letter for the Regional Director's signature. Therefore, an immediate supervisor cannot impose discipline.

During the period relevant to this case, Gary Scicchitano (caucasian) served as the Director, Bureau of Human Resources, James Robinson (caucasian) served as the Director, Office of Probation and Parole Services, Maria Marcinko (caucasian) served as Director of Personnel and Thomas Marshall (African American) served as Labor Relations Coordinator. In addition, the Board maintained an Equal Employment Opportunity office.

Ms. Ladelle Ingram (African American) was in charge of that office during the times relevant to this case. Mr. Watkins knew of this office and Ms. Ingram and he knew that he could submit any discrimination concerns directly to Ms. Ingram.

Further, as a supervisor, Mr. Watkins was a member of a union. As a union member, Mr. Watkins could grieve matters regarding his treatment by the Board. Mr. Watkins did grieve two discipline matters but not on the grounds of his race.

After Mr. Bukata became Mr. Watkins' supervisor in July of 1999, Mr. Watkins was "disciplined"¹ as follows:

DATE	ACTION	SUBJECT MATTER
April 18, 2000	Pre-disciplinary Conference ("PDC") Counseling only, no Discipline	Failure to complete Employee Performance Review for Agent Lloyd Knight and failing to requisition safety equipment for Agent Knight.
May 31, 2000	PDC Written Reprimand	Failed to properly monitor and execute orders concerning <u>Green</u> case.

¹ Discipline may include written reprimand, suspension or termination.

DATE	ACTION	SUBJECT MATTER
June 21, 2000	PDC 1 Day Suspension	Failed to timely comply with directives and unsatisfactory performance standards.
October 5, 2000	PDC 3 Day Suspension	Failed to monitor case of <u>James</u> .
November 16, 2000	PDC 5 Day Suspension Final warning	Failed to forward completed request for leave and failed to follow orders given regarding processing a leave request.
July 5, 2001	PDC Termination	Failed to properly monitor case of <u>Pitts</u> ; Failed to comply with order to see Mr. Bukata and failed to return a list with "max" expiration dates for cases; and Failed to monitor case to ensure timely hearing and failure to follow instructions.

A PDC was held on April 18, 2000, as a result of Mr. Watkins' failing to timely submit Agent Knight's performance review, and for failure to obtain the proper equipment for Agent Knight. These are serious infractions in that it impacted on Agent Knight's seniority status and rate of pay. Agent Knight's safety was also placed at risk. Despite the seriousness of Mr. Watkins' actions/inactions, no discipline was imposed.

A PDC was held on May 31, 2000, as a result of Mr. Watkins' failure to properly supervise a parolee, Derrick Green. Specifically, the parolee requested a continuation of his violation hearing in March 1999. The case was transferred into Mr. Watkins' unit in September 1999. The criminal charges were dismissed in November 1999. On February 2, 2000, information was requested from Mr. Watkins. He did not respond. The information was again requested on February 29 and March 21, 2000. Mr. Watkins did not respond. On March 22,

2000, Mr. Watkins was directed to complete a 257D form. On May 9, 2000, information was again requested. Mr. Watkins did not respond. On May 18, 2000, information was again requested. Mr. Watkins did not respond. When given a chance to explain his actions during the PDC, Mr. Watkins stated he "had just not gotten to it." Mr. Watkins received a written reprimand as a result of the above incident.

A PDC was held on June 21, 2000, as a result of Mr. Watkins' failure to timely comply with multiple directives from his supervisor. Mr. Watkins failed to: submit a memorandum memorializing a counseling session with one of his agents; provide a written explanation as to why a parolee report was so late; provide a written report as to why he failed to respond to requests from an Institutional Supervisor; provide an explanation as to why another parolee report was so late (to which he replied, "no reason"). As a result of the above, Mr. Watkins received a one day suspension.

A PDC was held on October 5, 2000, as a result of Mr. Watkins' failure to properly monitor a parolee. As a result of his inactions, the Board faced possible civil liability to the parolee because his revocation hearing was not timely held. It was also found that Mr. Watkins was not truthful during the PDC, which is a violation of the Board's code of conduct. Mr. Watkins admitted during the PDC that he did not have any controls in place to properly monitor court activity. As a result of the above, Mr. Watkins received a three day suspension.

A PDC was held on November 16, 2000, as a result of Mr. Watkins' failure to process requests for leave from his agents. The incident encompassed a period of nine months, involved six agents, and 298 hours in chargeable time. Mr. Watkins claimed that he misplaced all fourteen requests, but Mr. Bukata found all fourteen requests on Mr. Watkins' desk, in plain view. As a result of Mr. Watkins inactions, he received a five day suspension.

A final PDC was held on July 5, 2001, wherein three issues were addressed: 1) Mr. Watkins' failure to properly monitor a case, resulting in an untimely hearing (which was the third such incident in a year); 2) Mr. Watkins' failure to follow an instruction to see Mr. Bukata about an outstanding traffic citation; and 3) Mr. Watkins' failure to provide a report as directed. As a result of these inactions, Mr. Watkins' employment was terminated.

Contrary to Mr. Watkins' assertions, he was not denied clerical staff. To the contrary, Mr. Bukata made his own secretary available to Mr. Watkins. Mr. Greenberg (caucasian), also did not have a clerical person assigned to his unit. Therefore, even if Mr. Watkins' claims were true, it is clear that the actions were not racially motivated because caucasian employees experienced the same employment conditions.

Mr. Watkins was repeatedly advised of the deficiencies in his work. Hundreds of e-mails confirm Mr. Watkins' mistakes, both technical and clerical, as well as documenting Mr. Watkins' inability to complete job duties in a timely manner.

Mr. Bukata made hundreds of attempts, orally and in writing, formal and informal, to encourage Mr. Watkins to improve his performance. Despite the Board's patience, training, and encouragement, Mr. Watkins' ability to perform his job did not improve. As set forth above, Mr. Watkins' performance was sub-standard, and despite being given every opportunity to improve his work habits, he did not do so. Mr. Watkins was subjected to the progressive discipline used by the Board for all employees. After many warnings and numerous suspensions, the Board had no choice but to terminate Mr. Watkins' employment.

IV. DEFENDANTS' WITNESSES

Defendants respectfully submit this Witness List, and reserve the right to call one, some or all of the individuals named herein. Defendants also reserve the right to supplement and amend this list.

LIABILITY WITNESSES

1. Willie E. Jones
District Director
PA Board of Probation and Parole
1400 Spring Garden Street
Philadelphia, PA 19103
2. Michael Bukata (retired)
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
3. Thomas Marshall (retired)
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
4. LeDelle Ingram (retired)
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
(Retired)
Former Affirmative Action Officer
5. Stuart Greenberg
Pennsylvania Board of Probation & Parole
1101 S. Front Street
Harrisburg, PA 17104
6. Maria Marcinko
Director of Human Resources
1101 S. Front Street
Harrisburg, PA 17104
7. Barbara Kremp
AFSCME District Council 88
3031 Walton Road
Building C, Suite 300
Plymouth Meeting, PA 19462
8. Ramona Alexander
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104

9. Paul Rich
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
10. Kenneth Paul
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
11. Lloyd Knight
Pennsylvania Board of Probation & Parole
1101 South Front street
Harrisburg, PA 17104
12. Willie Pullins
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
13. Henry Watkins
14. Audrey Starling
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104
15. Barbara Moore
Pennsylvania Board of Probation & Parole
1101 South Front Street
Harrisburg, PA 17104

DAMAGE WITNESSES

1. Henry Watkins
2. Maria Marcinko

V. EXHIBITSDEFENDANTS' REVISED EXHIBIT LIST

EXHIBIT	DATE	DESCRIPTION	BATES
1.	2/9/98 2/22/00	Job Description for Watkins Job Description for Watkins	PPB02213-16 PPB03563-66 PPB04262-71
2.	5/26/00	Employee Performance Review for Watkins 12/98 - 12/99.	PPB01928-33
3.	12/18/00	Employee Performance Review for Watkins 12/99 to 12/00.	PPB03710; 2218- 21
4.	7/9/01	Employee Performance Review for Watkins and related notes by Bukata; 12/00 - 6/01.	PPB00866-83
5.	7/02/99	String E-mail beginning 6/28//99 re: Agent Knight	PPB04154-55
6.	11/29/99	String E-mail beginning 11/29/99 re: Agent Knight	PPB03535
7.	4/19/00	Memo to Jones from Watkins and Greenberg re: Recommendations for filling vacant clerk position	000075 000076
8.	12/02/99	String E-mail re: Phase I Exam for Agent Knight beginning 9/9/99.	PPB03513
9.	12/15/99	E-mail between Jones and Watkins.	PPB04142
10.	10/08/99	Memo to Watkins from Marcinko re: Lloyd Knight.	PPB01690-91
11.	4/14/00	E-mail between Bukata and Watkins dating back to 04/10/00.	PPB03602
12.	4/14/00	Memo to Watkins from Bukata re: PDC of 4/18/00	PPB00628
13.	4/18/00	Memo to Jones from Bukata re: PDC of 4/18/00	PPB00205-06
14.	4/18/00	Memo to Costa from Bukata re: Recommendation from PDC for Watkins.	PPB00204

EXHIBIT	DATE	DESCRIPTION	BATES
15.	4/27/00	Memo from Marshall to Marcinko re: Review of PDC Documentation for Watkins.	PPB01685
16.	4/18/00	Disciplinary Action Approval/ Disapproval	PPB02429
17.	5/12/00	Memo to Watkins from Bukata re: Counseling Session.	PPB01689
18.	7/17/01	String e-mail between Bukata, Watkins and Marshall re: Counseling Session for Agent Knight.	PPB02063-64
19.	7/17/01	String e-mail between Bukata and Watkins re: Counseling Session for Agent Knight.	PPB03889-88
20.	2/29/00	E-mail from Bukata to Watkins re: FW: Parker, Derrick 5487-U	PPB01681
21.	3/21/00	String e-mail between Watkins, Fedeanis and Bukata beginning on 2/29/00 re: Derrick Parker.	PPB00612-13
22.	5/18/00	E-mail from Bukata to Watkins re: Green	PPB01671
23.	5/23/00	E-mail from Rochelle King to Watkins and Bukata.	PPB01670
24.	5/23/00	E-mail between Marshall and Bukata re: PDC.	PPB01657
25.	5/24/00	Notice of PDC to Watkins.	PPB01659
26.	5/26/00	String E-mail re: Transfer of Derrick Green beginning 5/24/00.	PPB01668
27.	6/1/00	Memo to Marcinko from Bukata re: 5/31/00 PDC.	PPB00597-98
28.	6/1/00	Memo to Maria Marcinko from Bukata.	PPB01656
29.	6/1/00	Memo from Jones to Marcinko re: Discipline Recommendation for Watkins	PPB02590
30.	6/13/00	Memo from Marshall to Marcinko.	PPB01643
31.	6/21/00	Letter to Watkins from Costa giving him a written reprimand as a result of a PDC on 5/31/00.	PPB01641-42
32.	6/15/00	Memo to Watkins from Bukata re: PDC Notice for 6/21/00	PPB03634

EXHIBIT	DATE	DESCRIPTION	BATES
33.	6/22/00	Memo to Marcinko from Bukata re: Findings from PDC of 6/21/00	PPB02076-77
34.	6/22/00	Memo to Willie E. Jones from Bukata re: Recommendations from PDC of 6/21/00	PPB02075
35.	6/22/00	Memo to Costa from Jones re: Recommendation for Discipline.	PPB02073-74
36.	7/10/00	Memo to Marcinko from Marshall re: Review of PDC Documentation	PPB02449
37.	7/31/00	Disciplinary Action Approval/ Disapproval	PPB02446
38.	8/8/00	Letter to Watkins from Costa.	PPB02340-41
39.	9/25/00	String e-mail between Jones, Bukata and Robinson relating to William James.	PPB00550
40.	9/25/00 or 9/26/00	E-mail between Bukata and Watkins re: W. James 495AF/Untimely Revocation Hearing?	PPB03671
41.	10/2/00	Memo to Watkins from Bukata re: PDC Notice.	PPB03672
42.	10/6/00	Memo to Marcinko from Bukata re: PDC Recommendation.	PPB00186
43.	10/6/00	Memo to Marcinko from Bukata re: Findings from 10/5/00 PDC (Watkins)	PPB02587-88
44.	10/11/00	Memo to Costa from Jones re: Disciplinary Action Watkins.	PPB00185
45.	10/11/00	Memo to Costa from Jones re: PDC	PPB00187
46.	10/16/00	Memo to Marcinko from Marshall re: PDC Documentation	PPB02451
47.	10/18/00	E-mail from Marcinko to Bukata re: PDC.	PPB02589
48.	10/18/00	Memo to Marcinko from Bukata re: Questions/Answers from 10/5/00 PDC	PPB02579-80
49.	10/27/00	Memo to Marcinko from Marshall.	PPB02581
50.	10/30/00	Disciplinary Action Approval/ Disapproval of Watkins.	PPB02578
51.	10/31/00	Letter to Watkins from Costa.	PPB02342-43

EXHIBIT	DATE	DESCRIPTION	BATES
52.	1/27/98	Memo to Ronald Zappan from Kenneth Paul re: Failure to Submit STD 330's in a timely manner by Supervisor Watkins	PPB01520-22
53.	8/12/98	Memo to Watkins from Bukata re: Counseling Session of 8/11/98	n/a
54.	3/2/99	Letter to Daniel F. Solla from Willie Pullins subject: Leave Slips Overtime/ Lateness Submission Who is at Fault?	PPB04436-38
55.	2/26/99	Memo to Daniel F. Solla from Kenneth Paul re: Submission of Leave	PPB04443-44
56.	11/8/00	String e-mail between Marshall and Bukata re: leave slips.	PPB00484
57.	11/9/00	Memo to Watkins from Bukata regarding PDC Notice.	PPB00499
58.	11/16/00	Memo to Marcinko from Bukata.	PPB00495-98
59.	11/17/00	Memo to Marcinko from Bukata re: PDC Recommendation for Watkins.	PPB01527-28
60.	11/21/00	Memo to Costa from Jones re: PDC for Watkins.	PPB01499-1500
61.	11/21/00	Memo to Costa from Jones re: Recommendation for Discipline (Watkins)	PPB00200
62.	12/12/00	Letter to Watkins from Marcinko re: PDC	PPB01257-58
63.	6/20/01	String e-mail from Raffetto to Bukata re: Terrance Pitts	PPB00371
64.	6/21/01	Docket Sheet	PPB02023
65.	6/21/01	String e-mails between Raffetto, Watkins and Bukata re: Terrance Pitts.	PPB02022
66.	6/22/01	Memo David Detinburn, Michael Bukata and Henry Watkins.	PPB02030
67.	6/29/01	E-mail from James Raffetto to Henry Watkins re: Terrance Pitts.	PPB02021
68.	6/29/01	Memo to Watkins from Bukata re: PDC notice.	PPB01489
69.	7/3/01	Memo to Watkins from Bukata re: PDC.	PPB01488

EXHIBIT	DATE	DESCRIPTION	BATES
70.	6/26/01	Handwritten notes of Bukata in preparation for PDC.	PPB01443-47
71.	7/3/01	Memo to Bukata from Watkins re: Terrance Pitts.	PPB02033
72.	7/6/01	Memo to Marcinko from Bukata re: PDC Findings.	PPB02645-49
73.	7/6/01	Memo to Marcinko from Bukata re: Recommendation for Discipline (Watkins)	PPB01484-85
74.	7/9/01	Memo to Robinson from Jones Re: Recommendation for Discipline	PPB02048
75.	7/17/01	Memo from Marshall to Marcinko Re: Review of Proposed Disciplinary Action	PPB02526-27
76.	7/5/01	Disciplinary Action Approval/ Disapproval re: termination.	PPB02525
77.	12/12/00	Letter to Watkins from Marcinko re: PDC. Postal receipt directed to Watkins.	PPB01247-48; PPB01252
78.	07/19/99	String e-mail between Watkins, Freeman, Kable, Bukata.	PPB02147
79.	8/3/99	E-mail to Bukata from Watkins re: Missing Badge and Identification Card.	PPB00862-64
80.	8/05/99	Memo to Robinson from Jones	PPB02141-42
81.	8/09/99	Memorandum to Bukata from Watkins.	PPB03509-10
82.	8/11/99	Memo from Bukata to Jones regarding Badge for Supervisor Watkins.	PPB00856-57
83.	9/01/99	E-mail from Costa to Jones in response to Jones' 8/31 e-mail to Robinson.	PPB02135
84.	10/17/00	Memo to NW-4 Staff from Watkins.	PPB01745
85.	3/22/00	Memo from Watkins to Bukata re: Transfer of Agent Drayton.	PPB03591-92
86.	3/24/00	Bukata's response to Watkins' memo re: Transfer of Agent Drayton.	PPB03588-90

EXHIBIT	DATE	DESCRIPTION	BATES
87.	6/9/00	Henry Watkins nominated by Bukata for two courses.	PPB00908
88.	6/9/00	Henry Watkins nominated for two courses.	PPB00909
89.	2/1/01	Course Nomination (Leadership Development Academy) for Henry Watkins.	PPB03761
90.	1/10/00	Memo from Watkins to Bukata requesting a clerk typist.	PPB04258
91.	3/10/00	String e-mail between Weinstein, Bukata and Watkins regarding Robert Atkins. Weinstein wrote to Bukata.	PPB01549
92.	Undated	Secretary's Log	PPB03929-50
93.	3/10/00	Handwritten memo to Watkins from Bukata.	PPB03578
94.	5/04/00	String e-mail regarding an investigation on Thompson.	PPB03604-06
95.	6/8/00	String e-mail between Bukata and Watkins re: Thompson.	PPB01616-18
96.	4/17/01	String e-mail between Watkins, Knight, Hazelett and Bukata re: T. Good.	PPB03833
97.	4/23/01	String e-mail between Watkins, Knight and Hazelett.	PPB03825
98.	4/29/01	String e-mail between Watkins and Bukata re: Overdue Pardon Board Reports	PPB03801
99.	8/30/00	String e-mail between Bukata and Watkins re: Douglas Pardon Board.	PPB01904-06
100.	10/23/00	String e-mail going back to 6/27/00 between Jones, Eiceman, Bukata, Starnes, Watkins.	PPB01758
101.	12/14/00	E-mail between Bukata and Watkins re: PB Robert Douglas 0904 S.	PPB03736
102.	2/9/01	String e-mail between Bukata and Watkins re: PB Extensions.	PPB03765-66
103.	1/19/00	E-mail between Watkins and Bukata. Re: Nighttime Photos.	PPB03560
104.	6/22/00	String e-mail from Magaro, Judy to Watkins.	PPB03628

EXHIBIT	DATE	DESCRIPTION	BATES
105.	8/11/00	E-mail from Fickel to Jones and Bukata re Sanford.	PPB01105
106.	9/1/00	Memo dated 9/1/00 from Watkins to Costa re: Victor Sanford NJ Probationer.	PPB03664
107.	1/10/00	Memo from Watkins to Bukata re: Gooden:	PPB1895
108.	1/11/00	String e-mail between Bukata and Watkins beginning on 1/4/00.	PPB03554
109.	1/13/00	E-mail from Bukata to Hartwiger re: Gooden.	PPB03556
110.	7/11/01	String e-mail between Malseed, Central Office, Bukata and Watkins re: Whitney.	PPB03857
111.	7/12/01	String e-mail between Bukata, Watkins and Malseed re: Whitney.	PPB03883
112.	12/16/99	E-mail from Reiber to Watkins.	PPB03534
113.	3/02/00	String e-mail between Bukata and Watkins and Duda beginning on 2/9/00.	PPB01779
114.	12/14/00	Memo from Bukata to NW #4 Agents.	PPB03732
115.	8/17/00	Delinquency Request Form re: Anthony Webb.	PPB01061
116.	3/3/00	Handwritten note titled: "Instructions to Watkins"	PPB00936
117.	4/17/00	Handwritten notes relating to the Investigation Request/ Report of William Clark.	PPB03598
118.	9/15/00	String e-mail between Greenberg and Bukata beginning 9/14/00	PPB01343
119.	7/17/00	E-mail to Watkins from Audrey.	PPB01091
120.	9/8/00	Report on Inappropriate Conduct Complaint by Greenberg	PAPB03348- PAPB03427
121.	12/22/00	Handwritten memo to Watkins from Bukata re: EPR	PPB03742-43
122.	3/21/01	Handwritten notes to Watkins.	PPB00738
123.	4/17/01	Handwritten note from Bukata re: fourth attempt to get a proper report submitted.	PPB00715

EXHIBIT	DATE	DESCRIPTION	BATES
124.	5/23/01	Handwritten note signed by Bukata.	PPB03849
125.	6/4/01	Handwritten notes re: HW.	PPB00662
126.	6/13/01	Handwritten notes from Bukata.	PPB00669
127.	7/2/01	Handwritten memo to Watkins from Bukata re: A. Davis.	PPB03872
128.	7/12/01	Handwritten notes of Bukata regarding C. Whitney.	PPB00644-45
129.	7/13/01	Handwritten notes to Bukata re: conversation with Agent Knight.	PPB00646-47
130.	11/1/99	Investigation Request/Report	PPB00841-42
131.	11/01/99	Investigation Request/Report signed by Watkins for Agent Camma.	PPB00843
132.	12/27/99	Investigation Request/Report signed by Watkins for Agent Bentzley.	PPB00840
133.	1/4/00	Investigation Request/Report signed by Watkins.	PPB00783
134.	2/24/00	Investigation Request/Report signed by Watkins for Bentzley.	PPB01778
135.	4/11/00	Investigation Request/Report signed by Watkins for Agent Bentzley.	PPB01770
136.	4/11/00	Investigation/Request Report signed by Watkins for Agent Mondrosch.	PPB03596-97
137.	3/5/01	Investigation Request/Report signed by Watkins for Agent Knight	PPB03805
138.	1/11/00	Report regarding a parolee, Murphy.	PPB00957-60
139.	1/11/00	Summary of Investigation for Board of Pardons Re: Craig Murphy	PPB01793-96
140.	2/02/00	Report regarding proofreading.	PPB01792
141.	4/12/00	Memo to Interstate Division from Watkins, Subject: William Jubilee Parole #51941.	PPB00749
142.	2/27/01	String e-mail between Bukata and Watkins re: W. JUBILEE 5194 I.	PPB00748

EXHIBIT	DATE	DESCRIPTION	BATES
143.	3/4/01	Delinquency Request Form signed by Watkins.	PPB00734
144.	4/3/01	Delinquency Request Form.	PPB00735
145.	10/18/00	Special Field Report with handwritten note which states "3 months late".	PPB02028
146.	12/13/00	Special Field Report	PPB00789
147.	3/16/00	Memo from Bukata to Watkins.	PPB01775-76
148.	3/16/00	E-mail from Bukata to Starling and Watkins.	PPB01938
149.	5/23/01	Summary of Investigation	PPB00737
150.	4/19/01	E-mail from Joachim to Bukata re: mistake on report.	PPB04373
151.	6/1/99	Counseling Session from Bukata to Robert Joachim, Supervisor.	PPB04397-98
152.	9/02/99	Notice of Charges and Hearing regarding Agent Doriety, Supervisor Robert Joachim.	PPB04392
153.	9/02/99	E-mail from Bukata to Joachim.	PPB04391
154.	11/14/00	Handwritten note by Bukata.	PPB04378
155.	5/15/00	E-mail from Fickel to Joachim, Bukata, Jones, Folk re: Interstate Pretransfers	PPB04386
156.	6/2/00	E-mail to Joachim reprimanding him for a poorly written report relating to Murray.	PPB04384-85
157.	7/14/00	String e-mail beginning on 7/12/00 Re: Pardon Board - Thompson.	PPB04383
158.	7/21/00	E-mail from Bukata to Joachim.	PPB04387
159.	11/24/99	Memo to John Smith from Bukata notifying him of a predisciplinary conference.	PPB04159
160.	12/02/99	Memo to Jones from Bukata re: Agent John Smith Pre-Disciplinary Conference.	PPB04161
161.	12/02/99	This is a memo from Watkins to Bukata wherein the question and answer session for the pre-disciplinary conference of Agent Smith was recorded.	PPB04162-66

EXHIBIT	DATE	DESCRIPTION	BATES
162.	1/13/00	Memo from Watkins to Bukata re: the PDC for John Smith.	PPB04172-76
163.	1/14/00	Memo to Jones from Bukata re: Second PDC for John Smith.	PPB04170-71
164.	1/28/00	Letter to John Smith signed by Mike Neumyer, Director, Office of Management Services regarding his discipline.	PPB04177-78
165.	8/2/99	Grievance Form re: Watkins	PPB02274-75
166.	7/17/01	E-mail between Marcinko and Marshall.	PPB02551
167.	11/16/00	Greivance Form by Henry Watkins	n/a
168.	07/14/99	E-mail between Stout and Greenberg.	PPB00347
169.	08/04/99	Handwritten note.	PPB00346
170.	8/25/99	E-mail to Greenberg from Bukata which began on 8/24/99.	PPB00328
171.	10/06/99	Memo to Bukata from Watkins. Re: A memo from Agent Smith.	PPB03519-22
172.	12/30/99	E-mail to Greenberg from Bukata regarding a parolee.	PPB00322
173.	3/8/00	Notice of Charges and Hearing signed by Greenberg with a note which states, "approved the poor wording."	PPB00283
174.	3/10/00	String e-mail between Bukata, Starling and Fickel regarding Nordine Ross.	PPB00281-82
175.	3/24/00	E-mail between Bukata and Greenberg. Greenberg requested availability to attend a boot camp graduation.	PPB00303
176.	3/30/00	Memo to John Founds from Stuart Greenberg Re: Counseling Session.	PPB00133-42
177.	4/14/00	E-mail to Robinson from Jones.	PPB00316
178.	4/19/00	Memo to Greenberg from LeDelle A. Ingram regarding an alleged sexual harassment complaint.	PPB01365 PPB01349

EXHIBIT	DATE	DESCRIPTION	BATES
179.	9/19/01	Memo to Audrey Starling from LeDelle Ingram re: Alleged Offensive Behavior by Stuart Greenberg, Parole Supervisor.	PPB01352-53
180.	4/18/00	Memo to Costa from Bukata re: Recommendation from PDC of 4/17/00 regarding Greenberg	PPB00123-27
181.	4/27/00	Memo from Tom Marshall to Maria Marcinko regarding PDC of Greenberg.	PPB01380
182.	5/23/00	Letter to Greenberg from Costa Re: 4/17/00 Predisiplinary Conference.	PPB00121-22
183.	5/22/00	E-mail between Bukata and Greenberg.	PPB00309
184.	5/26/00	Memo to Greenberg from Jones re: Employee Performance Review.	PPB00250-54
185.	1/23/01	Performance evaluation for Stuart Greenberg from January 00 to January 01.	PPB03964-71
186.	6/2/00	E-mail between Bukata and Greenberg denying Greenberg overtime.	PPB00300-02
187.	6/9/00	Course Nomination Form re: Stuart	PPB00263-64
188.	10/6/00	E-mail to Greenberg from Bukata re: 13760 G. Kennedy.	PPB00312
189.	10/18/01	Investigation Request Report dated 10/7/01 by Greenberg with handwritten note from Bukata.	PPB04356
190.	(Undated)	Retirement card given to Bukata from Barbara Moore	PPB04542-43
191.	1/9/04	Letter written to Bukata by Audrey L. Starling with well wishes for retirement	n/a
192.	1/20/03	Memo to Willie Jones from Henry Watkins re: Review Performance Evaluation	45-48
193.	12/15/00	Grievance	n/a

VI. STIPULATIONS

The parties have executed a Stipulation of Facts. A copy is attached as Exhibit A.

VII. NUMBER OF DAYS FOR TRIAL

It is anticipated that the trial of this matter will last for five (5) days.

VIII. COMMENTS REGARDING LEGAL ISSUES

MOTIONS IN LIMINE:

Defendants have filed a Motion in Limine or will seek to exclude the following:

- Evidence of the verdict in the Russ-Tobias case against the Board
- Evidence, including testimony and documents that relate, regard or refer to the individual claims, lawsuits and/or settlement(s) of the following individuals:
 - Victoria Roadcloud
 - Martha Holman
 - James Burton
 - Henry Williams
 - Ernest Holmes
 - Ronald Zappan
 - Howru Self
 - Darryl Rankin
 - Calvin Ogletree, Deceased (deposition testimony)
 - Rosalind Russ-Tobias
 - Joseph Scott
 - Chantolees Mirman
 - Bonietta Ferguson
- Evidence of the Commonwealth of Pennsylvania's report published in 1993 regarding discrimination at the Board
- Evidence of the report published in April 2003 by the Pennsylvania Department of the Auditor General.
- Evidence of the "Sentinel Settlement"

The Defendants will only pursue their breach of contract counterclaim if that counterclaim is tried separately but reserve their right to appeal the Court's Order denying their Motion for Summary Judgment on that claim and/or denying their Motion to sever that claim for trial.

Respectfully submitted,

Dilworth Paxson LLP

By:



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Attorney for Defendants,
Pennsylvania Board of Probation and Parole,
Willie E. Jones, and Michael Bukata

Dated: November 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Amended Pretrial Memorandum has been served upon the following counsel this 28th day of November, 2007, via First Class Mail and Electronic Court Filing:

Robert Sugarman, Esquire
Robert Morris Building – 11th Floor
100 N. 17th St.
Philadelphia, PA 19103



Gino J. Benedetti, Esquire
Attorney I.D. No.: 59584
DILWORTH PAXSON LLP

Dated: November 28, 2007

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

HENRY WATKINS,	:	
	:	
Plaintiff,	:	NO. 02-CV-2881
	:	
	:	
v.	:	
	:	
PENNSYLVANIA BOARD OF	:	
PROBATION & PAROLE,	:	
EDWARD JONES, and MICHAEL BUKATA,	:	
	:	
Defendants.	:	

JOINT STIPULATIONS OF FACT

Plaintiff and Defendants, by their respective attorneys, on this 6th day on ^{July}~~May~~, 2007, hereby stipulate to the following facts:

A. The Claims

1. Plaintiff, Henry Watkins ("Mr. Watkins"), asserts the following claims against the Pennsylvania Board of Probation and Parole (the "Board"), Willie E. Jones (improperly pled as Edward Jones) ("Mr. Jones") and Michael Bukata ("Mr. Bukata") (collectively the "Defendants"):

Count	Claim	Defendants
I	Discrimination concerning alleged contractual relationship under 42 U.S.C. § 1981 and 42 U.S.C. § 1983	The Board Mr. Jones (<i>official/individual</i>) Mr. Bukata (<i>official/individual</i>)
V	Hostile Work Environment under Title VII	The Board Mr. Jones (<i>official</i>) Mr. Bukata (<i>official</i>)

2. The Defendants deny violating any of these laws.

B. The Parties

3. The Board is an independent agency of the Commonwealth of Pennsylvania. It has the statutory authority to parole and reparole, and commit and recommit offenders, who are sentenced to a maximum of two or more years and violate the terms of their sentence.

4. The Board maintains its central office or headquarters in Harrisburg, Pennsylvania.

5. The Board is organized into several different regions and districts.

6. At all relevant times, Thomas Costa (caucasian) served as the Director of the Eastern Region of the Board.

7. The Philadelphia District of Board is divided into separate divisions and each division is further divided into units.

8. Mr. Jones (caucasian) is employed by the Board as a District Director for the Board's Philadelphia District. He has held that position since April of 1997. As District Director, Mr. Jones is one of the individuals responsible for the Philadelphia District.

9. Mr. Bukata (caucasian) was employed by the Board as a Deputy District Director. As a Deputy District Director, Mr. Bukata was in charge of the Northwest Division of the Philadelphia District from March 1997 to January 9, 2004, when he retired.

10. Mr. Watkins, (African American), worked for the Board from October 1973 until August 2001. The Board hired Mr. Watkins as a Parole Agent in October 1973.

11. The Board promoted Mr. Watkins to the position of Parole Supervisor in 1998.

12. As a supervisor, Mr. Watkins was a member of the American Federation of State, County and Municipal Employees, a labor union which was party to a collective bargaining agreement with the Board.

13. Beginning in July 1999, Mr. Bukata became Mr. Watkins' direct supervisor. Mr. Jones supervised Mr. Bukata. Mr. Watkins supervised a unit of parole agents in the Northwest division.

14. Parole agents are the Board employees who have direct contact with the offenders and monitor the offenders' compliance with their parole terms.

15. The Board terminated Mr. Watkins' employment on August 3, 2001.

C. General Facts

16. In addition to filing a lawsuit like this one, an employee, like Mr. Watkins, could challenge any discipline action taken by the Board by: (a) filing a grievance pursuant to the collective bargaining agreement; (b) submitting a complaint to the Board's affirmative action officer, Ms. LeDelle Ingram (African American); and/or (c) filing a complaint with the Pennsylvania Civil Service Commission (an entity separate from the Board) pursuant to 71 Pa. Cons. Stat. § 741.95(a) (1989).

17. Periodically, the Board reassigns census tracts from one unit to another if it is determined that one unit has more parolees than another unit.

18. Mr. Watkins agrees that it is his responsibility to manage the workload in his unit among his agents.

19. When Mr. Watkins became a supervisor, the Board assigned Dierdra Gardner ("Ms. Gardner") to serve as the clerical support person for Mr. Watkins' unit.

20. Unfortunately, Ms. Gardner suffered a non-work related injury that made her unable to perform her job.

21. For a period during Ms. Gardner's absence, the Board did not assign a clerical support person to work directly for Mr. Watkins' unit.

22. Ms. Ramona Alexander was Mr. Bukata's secretary.

23. Ms. Alexander sat approximately 300 to 400 feet away from Mr. Watkins on the same floor.

24. Mr. Watkins had telephone and email access to Ms. Alexander.

25. Mr. Watkins and his agents would “put all the work in [their] box in [their] unit and on occasion [Ms. Alexander] would come back and pick it up unless it was an emergency.”

26. Approximately one year after Ms. Gardner was first unable to work due to her injury, Mr. Jones assigned Brenda Yarborough (“Ms. Yarborough”) to work as Mr. Watkins’ unit secretary.

27. Mr. Watkins describes Ms. Yarborough as “a good secretary” and “very professional.”

28. Ms. Yarborough worked for Mr. Watkins’ unit until the Board terminated Mr. Watkins’ employment.

29. Stuart Greenberg (caucasian) was a supervisor who was also supervised by Mr. Bukata.

D. Discipline of Mr. Watkins

30. Mr. Watkins supervised Lloyd Knight (African American), a parole agent in his unit.

31. As part of his supervisory duties, Mr. Watkins was required to conduct an employee performance review (EPR) for Mr. Knight.

32. On April 18, 2000, Mr. Bukata conducted a PDC with Mr. Watkins concerning Agent Knight’s EPR and safety equipment issues.

33. Following the April 18, 2000 PDC, a written reprimand was issued to Mr. Watkins.

34. Mr. Watkins received a one day suspension following a PDC on June 21, 2000.

35. On October 5, 2000, Mr. Bukata conducted a PDC with Mr. Watkins.

36. Following the October 5, 2000, PDC, a three day suspension was imposed on Mr. Watkins.
37. Mr. Watkins grieved this discipline through his Union.
38. Mr. Marshall (African American) heard Mr. Watkins' grievance.
39. Mr. Watkins contends that Mr. Rich and his union were ineffective and/or did not pursue the grievance.
40. The Board denied the grievance.
41. Leave slips are Board forms prepared, in part, by an employee who is requesting time off from work.
42. Supervisors, like Mr. Watkins, are required to review and approve these requests and forward them to the Board's timekeeper so that the Board has accurate records of the leave time available for its employees.
43. Consequently, on November 16, 2000, Mr. Bukata conducted a PDC with Mr. Watkins for failing to process requests for leave from his agents.
44. Following the November 11, 2000 PDC, a five day suspension was imposed on Mr. Watkins.
45. Mr. Watkins grieved this discipline through his Union.
46. Mr. Marshall (African American) heard Mr. Watkins' grievance.
47. Mr. Watkins contends that Mr. Rich and his union were ineffective and/or did not pursue the grievance.
48. The Board denied the grievance.
49. On July 5, 2001, Mr. Bukata conducted a PDC with Mr. Watkins.
50. Following the July 5, 2001 PDC, Mr. Watkins' employment was terminated.
51. Mr. Watkins did not challenge his termination through the grievance process, the Board's affirmative action office or the civil service commission. He filed this lawsuit.

E. Mr. Watkins' Job Search

52. After his termination, Mr. Watkins looked at jobs available at City Hall.

53. Although Mr. Watkins cannot recall the jobs that were available at City Hall, he did not believe any of the City Hall jobs to be "appropriate" based on his age, education and prior position.

54. Mr. Watkins did not apply for any jobs that were posted on any internet websites including the sites for a historically black college, the US Government, and Monster.com.

55. At the time of Mr. Watkins' deposition, April 3, 2003, he intended to apply for a job at the Warrant Service Unit for Philadelphia.

56. As of April 3, 2003, Mr. Watkins had gone to a job fair "last year" "somewhere downtown", but he did not apply for any jobs.

57. Mr. Watkins subscribes to the Philadelphia Inquirer and looks at the employment listings every Sunday.

58. Mr. Watkins has never applied for any jobs listed in the Philadelphia Inquirer.

59. At the time of Mr. Watkins' deposition, April 3, 2003, he intended to apply for a position with Delaware State University.

60. Mr. Watkins also testified that he was considering returning to school to enhance his credentials. *Id.* at 290.

61. Mr. Watkins, as recently as July of 2006, stated his efforts to obtain employment were:

Watkins has continually reviewed the want-ads in the newspaper and on the internet in an attempt to find employment in his field. He has also networked with business associates and contacts in order to try to find a position. Watkins has not been offered any position. Watkins is now in the exploratory/planning stages of opening his own business.

62. Mr. Watkins' job duties as a Supervisor with the Board included reviewing reports, assigning caseloads, conducting conferences with employees and clients, developing

sanctions for clients, working closely with employees to develop their skills, answering the telephone, taking telephone messages, making referrals over the telephone, training new employees, assisting agents in making contacts with clients, evaluating the performance of agents, taking urine samples, preparing weekly overtime reports, maintaining contacts with the neighborhood and local police.

63. Mr. Watkins testified that he looked at employment advertisements for positions involving social work with the Government, and with the Warrant Service Unit in Philadelphia.

64. Mr. Watkins has not provided the Board with any application or documentation of any kind concerning his job search.

Respectfully submitted,

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